



In re Estate of Naomi Muthoni Ndungu (Deceased) (Family Miscellaneous Application E040 of 2023) [2024] KEHC 8799 (KLR) (23 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
FAMILY MISCELLANEOUS APPLICATION E040 OF 2023**

SM MOHOCHI, J

JULY 23, 2024

IN THE MATTER OF THE ESTATE OF NAOMI MUTHONI NDUNGU (DECEASED)

BETWEEN

ALICE WAMBUI MWANGI 1ST APPLICANT

MARY WANJIRU MAIGWA 2ND APPLICANT

AND

SUSAN WANGARE MAIGWA RESPONDENT

RULING

1. Before me is a summons for revocation of grant filed as a miscellaneous Application dated 25th July 2023 supported by a sworn Affidavit of Alice Wambui Mwangi.
2. While this court had directed the matter be heard by way of viva voce and that the Applicant testified at length on basis for revocation of the grant issued in in Nakuru Chief Magistrates Court Succession Cause No 256 of 2020 for reasons that included;
 - a. That the deceased had disposed of his assets at the time of his death and that there was nothing remaining;
 - b. That the Applicant had filed the succession before the subordinate court out of greed to disposes an innocent purchaser.
 - c. And that in fact the deceased left behind a written will and as such an intestate probate was untenable.
3. The Respondent Susan Wangare Waigwa filed response and orally testified that he was unaware that the deceased had sold off the land in question and only saw the Agreement for sale to one Kagiri when the case was going on.



4. That the filed the succession cause to save her deceased mother's property and that she suspected the chief to be involved in an attempted land grab.
5. Parties were directed to file written submissions but none of them complied.

Analysis and Determination

6. This Court is alive to its jurisdiction and following the inclusion of the grant sought to be revoked the court traced its jurisdiction finding as follows;
7. Section 76 of the *Law of Succession Act* Cap 160 Laws of Kenya Provides for revocation and annulment of grant as follows:
 76. Revocation or annulment of grant

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

 - (a) that the proceedings to obtain the grant were defective in substance;
 - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) that the grant has become useless and inoperative through subsequent circumstances.”
8. The language and phraseology of Section 76 imply of a court seized of the probate jurisdiction by appreciating that the annulment or revocation may be upon an application or on its own motion. For a court to move on its own motion then it must have been involved in making of the grant.
9. In the case of *Musine v Osamo (Sued as co-administrator of the Estate of Stephen Osamo (Deceased)* (Miscellaneous Application E012 of 2022) [2023] KEHC 20217 (KLR) (17 July 2023) (Ruling) W. Musyoka J held that, the High Court can only revoke grants made by itself but not those made by the Chief Magistrate's Court except by way of appeal.
10. In this instant Application the impugned grant issued in Nakuru Chief Magistrates Court Succession Cause No 256 of 2020 sought to be revoked was in fact not attached or included leaving the court with nothing to consider but conjecture.



11. This court is unaware when the impugned grant issued in Nakuru Chief Magistrates Court Succession Cause No 256 of 2020 was made or the contents thereof.
12. The Applicant did not file an Appeal against the issuance of the impugned grant in Nakuru Chief Magistrates Court Succession Cause No 256 of 2020.
13. I am thus persuaded to find that, while there may be persuasive basis for revoking the impugned grant, this court is unable to consider for revocation a grant it never issued, unless such an issue is on an appeal.
14. The upshot is that the miscellaneous Application dated 25th July 2023 is misconceived and incompetent, for the foregoing reasons. It is hereby struck out.
15. The Costs are awarded to the Respondent.

It is so ordered

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 23RD DAY OF JULY, 2024.

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MOHOCHI S.M.

JUDGE

